

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA

v.

**DAVID CALHOUN,
Defendant.**

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CRIMINAL ACTION NO. 05-363-6

CIVIL ACTION NO. 10-986

ORDER

AND NOW, this 28th day of June 2012, upon consideration of Defendant David Calhoun's *pro se* Motion for a New Trial Pursuant to Federal Rule of Criminal Procedure 33 (Doc. No. 403), his Motion to Vacate, Set Aside, or Correct his Sentence Pursuant to 28 U.S.C. § 2255 (Doc. No. 439), and all briefs, supplemental briefs, declarations and exhibits filed in support of and in opposition thereto; after a careful review of the transcripts and all evidence and documents of record in this case; and for the reasons stated in the Opinion filed this day, it is hereby **ORDERED** as follows:

1. Defendant's Motion for a New Trial Pursuant to Federal Rule of Criminal Procedure 33 (Doc. No. 403) is **DENIED**.
2. The Court **RESERVES RULING** on Defendant's Motion to Vacate, Set Aside, or Correct his Sentence Pursuant to 28 U.S.C. § 2255 (Doc. No. 439) to the extent it challenges the use of shackles during the preliminary stage of jury selection, but **DENIES** the Motion in all other respects. **Within twenty-one (21) days** of the date of this Order the Government shall submit any affidavits or other record evidence pertaining to the use of shackles in this case. The Court will set a date and time for an evidentiary hearing by separate order and will require the presence of counsel who were present before and during jury selection on April 17, 2006.

3. Upon consideration of Defendant's Motion to File Signed Declaration in Relation to the Government's Newly Released Evidence (Doc. No. 473), it is hereby **ORDERED** that the Motion is **GRANTED**. The declaration and supporting exhibits attached to Defendant's Motion are deemed filed as of the date of the Motion. The Court has considered these documents in ruling on the § 2255 Motion.

4. Upon consideration of Defendant's Motion to Seal (Doc. No. 477), it is hereby **ORDERED** that the Motion is **DENIED without prejudice**.¹

5. Defendant's outstanding discovery motions (Doc. Nos. 422, 425, 426, 475) are **DISMISSED as moot**.

It is so **ORDERED**.

BY THE COURT:

/s/ Cynthia M. Rufe

CYNTHIA M. RUFÉ, J.

¹ In his Motion, Defendant asserts: "In light of this Court having granted the Government's motion to seal the prior documents, Movant is obliged to respect the Government's position and this Court's mandate," and file the document under seal. While the Court appreciates Defendant's attempt to comply with Court's prior order, Defendant's "Notice of Receipt of Government's Response" does not contain information that was the subject of the Court's prior sealing order.